

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

CITY OF SOUTH CHARLESTON, a)	
West Virginia municipality,)	
)	
Plaintiff,)	
v.)	
)	
JOHNSON CONTROLS, INC., a)	
Wisconsin corporation, A.O. SMITH)	Case No. 2:21-cv-00052
CORPORATION, a New York)	
corporation; FERGUSON ENTERPRISES,)	
LLC, a Virginia limited liability company;)	
and BEDIVERE INSURANCE)	
COMPANY d/b/a ONEBEACON)	
INSURANCE COMPANY, a)	
Pennsylvania insurance company,)	
)	
Defendants.)	

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §§ 1332, 1441, and 1446 defendant Johnson Controls, Inc. (“JCI”), removes this action from the Circuit Court of Kanawha County, West Virginia (the “State Court Action”), which was assigned Index No. 614198/2020 to the United States District Court for the Southern District of West Virginia. As set forth below, this action is properly removed because JCI has complied with the statutory requirements for removal under 28 U.S.C. §§ 1441 and 1446 and this Court has original jurisdiction over this action in accordance with 28 U.S.C. § 1332.

I. JCI’S NOTICE OF REMOVAL COMPLIES WITH THE STATUTORY REQUIREMENTS UNDER 28 U.S.C. § 1446.

1. On December 4, 2020, Plaintiff City of South Charleston (“Plaintiff”) commenced this action by filing a complaint captioned *City of South Charleston v. Johnson Controls, Inc., et al.* (the “Complaint”) in the State Court Action.

2. On or about December 22, 2020, JCI was served with a copy of the Summons and

Complaint in the State Court Action. A true and correct copy of the Docket Sheet and Complaint are attached as Exhibit A.

3. Plaintiff alleges, among other things, that JCI breached its contract with Plaintiff with regard to the maintenance and services for equipment at the Community Center and Ice Arena. (Ex. A. ¶¶ 10.) Plaintiff alleges claims against JCI for breach of contract and seeks a monetary award for damages allegedly sustained in the amount greater than \$350,000. (Ex. A. ¶ 24.)

4. This Notice is timely filed under 28 U.S.C. § 1446(b). JCI was served with the Complaint on or around December 22, 2020. This Notice is thus filed within 30 days of service of the Complaint as required by 28 U.S.C. § 1446(b).

5. Plaintiff filed the State Court Action in the Circuit Court of Kanawha County, West Virginia, which is located within the jurisdiction of the United States District Court for the Southern District of West Virginia. 28 U.S.C. § 129(b). Accordingly, this action may be removed to this District, as the “district and division embracing the place where [the] action is pending.” 28 U.S.C. § 1441(a).

6. In accordance with 28 U.S.C. § 1446(d), JCI will provide written notice of the removal of this action to Plaintiff and Defendants and will file a copy of this Notice with the Clerk of the Circuit Court of Kanawha County, West Virginia.

II. THIS COURT HAS JURISDICTION IN ACCORDANCE WITH 28 U.S.C. § 1332(a)

7. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332 (a). Under Section 1332(a), a federal court has jurisdiction over actions whenever (1) the matter in controversy exceeds the sum or value of \$75,000, exclusive of interests and costs and (2) is between citizens of different states. *See* 28 U.S.C. § 1332(a)(1).

8. This matter satisfies the jurisdictional requirements of Section 1332 because the parties are completely diverse and the Plaintiff seeks a monetary remedy in excess of \$75,000. (Ex. A ¶¶ 17 & 24.)

A. Plaintiff is Diverse from all Defendants

9. Plaintiff is a municipality located in Kanawha County, West Virginia (Ex. A ¶ 1.) Accordingly, for the purposes of 28 U.S.C. § 1332, Plaintiff is deemed to be a citizen of West Virginia.

10. For purposes of diversity jurisdiction, a corporation is a citizen of the state in which it is incorporated and the state in which its principal place of business is located. 28 U.S.C. § 1332(c)(1).

11. JCI is a Wisconsin corporation with its principal place of business at 5757 North Green Bay Avenue, Milwaukee, Wisconsin 53029. *See* Ex. B. The West Virginia Secretary of State's website shows that JCI is a foreign corporation. Ex. C.

12. Defendant A.O. Smith Corporation is a Delaware corporation with its principal place of business in Milwaukee, Wisconsin.

13. Defendant Ferguson Enterprises, LLC is a Virginia limited liability company. Ferguson Enterprises, LLC's sole member is Ferguson plc, a company organized under the laws of the United Kingdom, with its principal place of business in Berkshire, United Kingdom.

14. Defendant Bedivere Insurance Company d/b/a OneBeacon Insurance Company is a Pennsylvania corporation with its principal place of business in Philadelphia, Pennsylvania.

15. Thus, there is complete diversity between Plaintiff and Defendants sufficient to satisfy the requirements of 28 U.S.C. § 1332(a)(1). As a result, the State Court Action may be removed to this Court under 28 U.S.C. § 1441(a).

B. Plaintiff alleges damages sufficient to satisfy the required amount in controversy.

16. Plaintiff alleges that it has suffered damages in excess of \$75,000. (Ex. A ¶¶ 17 & 24.) Thus, Plaintiff's allegations of damages satisfy the threshold requirements of 28 U.S.C. § 1332.

III. JCI'S RESERVATION OF RIGHTS

17. JCI files this Notice without waiving any defenses, objections, exceptions or obligations that may exist in their favor in either state or federal court. JCI will file its answer or other objections within the time period permitted under Federal Rule of Civil Procedure 81.

18. In making the allegations in this Notice of Removal, JCI does not concede in any way that the allegations in the Complaint are true, that Plaintiff has asserted claims upon which relief can be granted, or that recovery of the amount sought is authorized or appropriate.

19. JCI further reserves the right to amend or supplement this Notice. In the event any questions arise as to the propriety of the removal of this action, JCI respectfully requests the opportunity to present a brief, oral argument, and any further evidence necessary in support of its position that this action is removable.

Dated: January 20, 2021

Respectfully submitted,

JOHNSON CONTROLS, INC.

/s/ Gene W. Bailey, II
Gene W. Bailey, II (WVSB #203)
John H. Tinney, Jr. (WVSB #6970)
John K. Cecil (WVSB #9155)
HENDRICKSON & LONG, PLLC
214 Capitol Street
Charleston, WV 25301
Tel: 304-346-5500
Fax: 304-346-5515

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

CITY OF SOUTH CHARLESTON, a)	
West Virginia municipality,)	
)	
Plaintiff,)	
v.)	
)	
JOHNSON CONTROLS, INC., a)	
Wisconsin corporation, A.O. SMITH)	Case No.
CORPORATION, a New York)	
corporation; FERGUSON ENTERPRISES,)	
LLC, a Virginia limited liability company;)	
and BEDIVERE INSURANCE)	
COMPANY d/b/a ONEBEACON)	
INSURANCE COMPANY, a)	
Pennsylvania insurance company,)	
)	
Defendants.)	

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of January, 2021, I electronically filed this "**Notice of Removal**" with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following and served a true and accurate copy of the document via U.S. Mail, postage prepaid and addressed as follows:

Michael J. Del Guidice, Esquire
CICCARELLO, DEL GUIDICE & LAFON
1219 Virginia Street, E., Suite 100
Charleston, WV 25301
Counsel for Plaintiff

A.O. SMITH CORPORATION
c/o James Stern
P.O. Box 245008
Milwaukee, WI 53224

FERGUSON ENTERPRISES, LLC
c/o Corporate Creations Network Inc.
126 East Burke Street
Martinsburg, WV 25401

BEDIVERE INSURANCE COMPANY
d/b/a ONEBEACON INSURANCE COMPANY
a/o Corporation Service Company
209 West Washington Street
Charleston, WV 25302

/s/ Gene W. Bailey, II
Gene W. Bailey, II (WVSB #203)